

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04--11958-RGS

MARTIN J. GALVIN, JR., ED.D,)
Plaintiff)
VS.)
THE TOWN OF YARMOUTH,)
PETER L. CARNES AND STEVEN XIARHOS)
Defendants)

AMENDED ANSWER OF THE DEFENDANTS TO PLAINTIFF'S
FIRST AMENDED COMPLAINT AND JURY CLAIM

The defendants hereby answer the plaintiff's First Amended Complaint, paragraph by paragraph, as follows:

INTRODUCTION

1. The defendants state this is an introductory paragraph, therefore, no response is required. To the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.

PARTIES

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
3. The defendants admit the allegations contained in this paragraph.
4. The defendants admit the allegations contained in this paragraph.
5. The defendants admit the allegations contained in this paragraph.

JURISDICTION AND VENUE

6. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendants. The to the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.
7. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendants. The to the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.

FACTS

8. The defendants admit the allegations contained in this paragraph.
9. The defendants admit the allegations contained in this paragraph.
10. The defendants admit the allegations contained in this paragraph.
11. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
12. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
13. The defendants deny the allegations contained in this paragraph.
14. The defendants deny the allegations contained in this paragraph.
15. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
16. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
17. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
18. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
19. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

COUNT I

(Wrongful Dissemination of CORI)

20. The defendants reassert their responses to paragraphs 1 through 19 of this Answer.
21. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendants. The to the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.
22. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendants. The to the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.

- 23. The defendants deny the allegations contained in this paragraph.
- 24. The defendants deny the allegations contained in this paragraph.

COUNT II
(Mass. Gen. L. ch.12, §§11H and 11I)

- 25. The defendants reassert their responses to paragraphs 1 through 24 of this Answer.
- 26. The defendants deny the allegations contained in this paragraph.
- 27. The defendants deny the allegations contained in this paragraph.
- 28. The defendants deny the allegations contained in this paragraph.

COUNT III
(42 U.S.C. §)

- 29. The defendants reassert their responses to paragraphs 1 through 28 of this Answer.
- 30. The defendants deny the allegations contained in this paragraph.
- 31. The defendants deny the allegations contained in this paragraph.
- 32. The defendants deny the allegations contained in this paragraph.
- 33. The defendants deny the allegations contained in this paragraph.

COUNT IV
(Invasion of Privacy)

- 34. The defendants reassert their responses to paragraphs 1 through 33 of this Answer.
- 35. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendants. The to the extent a response is required, the defendants deny the allegations contained in this paragraph of the plaintiff's amended complaint.
- 36. The defendants deny the allegations contained in this paragraph.
- 37. The defendants deny the allegations contained in this paragraph.

COUNT V

(Tortious Interference with Contractual Relations)

- 38. The defendants reassert their responses to paragraphs 1 through 37 of this Answer.
- 39. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 40. The defendants deny the allegations contained in this paragraph.
- 41. The defendants deny the allegations contained in this paragraph.
- 42. The defendants deny the allegations contained in this paragraph.

COUNT VI

(Intentional Infliction of Emotional Distress)

- 43. The defendants reassert their responses to paragraphs 1 through 42 of this Answer.
- 44. The defendants deny the allegations contained in this paragraph.
- 45. The defendants deny the allegations contained in this paragraph.
- 46. The defendants deny the allegations contained in this paragraph.

COUNT VII

(Negligent Infliction of Emotional Distress)

- 47. The defendants reassert their responses to paragraphs 1 through 46 of this Answer.
- 48. The defendants deny the allegations contained in this paragraph.
- 49. The defendants deny the allegations contained in this paragraph.
- 50. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount against the defendants, and furthermore, the defendants request this Honorable Court enter judgment for the defendants and against the plaintiff along with interest, costs and attorneys fees.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's First Amended Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

By way of affirmative defense, the defendants say that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct the defendants were not and are not legally responsible.

THIRD DEFENSE

By way of affirmative defense, the defendants state that the plaintiff cannot recover for the reason that the plaintiff failed to give notice of the damages allegedly suffered by the plaintiff to the defendants as required by M.G.L. c. 258.

FOURTH DEFENSE

By way of affirmative defense, the defendant says that the action is barred by the applicable statute of limitations.

FIFTH DEFENSE

By way of affirmative defense, the defendants state that they are entitled to all immunities available under the laws of the United States and the Commonwealth of Massachusetts, including the defense of qualified immunity.

JURY CLAIM

The defendants claim a trial by jury as to all issues properly triable to a jury.

Respectfully submitted,
Defendants,
By their attorneys,

/s/ Thomas P. Campbell
Leonard H. Kesten, BBO #542042
Thomas P. Campbell, BBO #564124
Brody, Hardoon, Perkins & Kesten, LLP
One Exeter Plaza
Boston, MA 02116
(617) 880-7100

Dated: October 13, 2005